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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

NOV 01 2004

IN RE:

Petitioner:

Beneficiary:

[Redacted]

PETITION:

Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a school. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as an Islamic teacher. The director determined that the petitioner had not established that it is a religious denomination having a bona fide nonprofit religious organization in the United States. The director also determined that the petitioner had not established that the position is that of a religious worker or that the beneficiary had worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The petitioner's motion to reopen and reconsider was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

On appeal, counsel submits a letter and additional documentation. Additionally, counsel indicated on the Form I-290B that a brief and/or additional evidence would be forwarded to the AAO within 30 days. As of the date of this decision, more than 15 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(2) defines religious denomination as:

[A] religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and

discipline, religious services and ceremonies, established places of religious worship and religious congregations, or comparable indicia of a bona fide religious denomination.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

The petitioner submitted a November 5, 1996 letter from the Internal Revenue Service (IRS), informing the petitioner that it had been granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) as an organization described in sections 509(a)(1) and 170(b)(1)(A)(ii). This establishes that the petitioner was granted tax-exempt status as an educational organization.

The petitioner must either provide verification of individual exemption from the IRS as a religious organization, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, if applicable, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

In response to the director's request for evidence (RFE) dated December 4, 2002, counsel for the petitioner stated that the petitioner is "affiliated" with the Islamic Society of Central Jersey, and that the petitioner is the "parochial school for the children of the members of the Islamic Society of Central Jersey." As evidence, counsel submitted an Exempt Organization Certificate from the state of New Jersey, exempting the Islamic Society of Central Jersey from sales tax. A copy of a February 27, 2003 page from the Islamic Society of Central Jersey website, refers to the petitioner as the "full-time Islamic School at the Islamic Society of Central Jersey." The petitioner also submitted copies of Internet news articles that refer to the petitioner as a "religious school."

On appeal, the petitioner submitted a copy of a July 7, 1997 letter from the IRS granting the Islamic Society of Central Jersey tax exemption under section 501(c)(3) of the IRC as an organization described in sections 509(a)(1) and 170(b)(1)(A)(iv). The petitioner also submitted a copy of the certificate of incorporation for the Islamic Society of Central Jersey, and a copy of an agreement entered into by the petitioner and the Islamic Society of Central Jersey.

This agreement makes it clear that the petitioner is not a subsidiary or an affiliate of the Islamic Society of Central Jersey, and that the two organizations maintain only a close working relationship. Therefore, whether or not the

Islamic Society of Central Jersey is a religious organization as defined by the regulation is not relevant to these proceedings.¹

The petitioner's evidence does not establish that it is a bona fide religious organization exempt from taxation as required by the regulation. We note that the petitioner's letterhead identifies it as an educational organization, open to all students without restrictions. We note further that the petitioner states that it also employs lay teachers.

The record is clear, however, that the petitioner is associated with the Muslim faith, and thus a member of a religious denomination. Nonetheless, while it incorporates religious instruction into its curriculum, the evidence is insufficient to establish that it meets the requirements of the statute and regulation as a nonprofit religious organization.

According to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

The petitioner stated that it has employed the beneficiary since September 1999 as a teacher of Quran, and that his duties included "teaching the most advanced students and acting as an advisor to the lay teachers on questions of the Quran, Islamic studies and Islamic law." The petitioner submitted a copy of what purports to be a copy of an "experience certificate" issued by the Charity Group for Quran Memorization in Saudi Arabia, attesting that the beneficiary was a Noble Quran teacher. We note that the translation accompanying this document does not comply with the provisions of 8 C.F.R. § 103.2(b)(3) in that the translator is not identified, did not certify that the translation was complete and accurate, and did not certify that he or she is competent to translate from Arabic into English.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

¹ For the record, we note that the petitioner's evidence is insufficient to establish that the Islamic Society of Central Jersey is tax-exempt as a religious organization, as the petitioner fails to provide evidence that meets the requirements of 8 C.F.R. § 204.5(m)(3)(i).

According to information obtained from the University of California website, the "Qur'an is a Message from Allah to humanity . . . [and] is one leg of two which form the basis of Islam. The second leg is the Sunnah . . . Unlike the Sunnah, the Qur'an is quite literally the Word of Allah."

The evidence is sufficient to establish that the position is that of a religious instructor and is directly related to the religious creed of the petitioner's denomination. The evidence is sufficient to establish that the position is a religious occupation within the meaning of the regulation.

The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on June 27, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as an Islamic teacher throughout the two-year period immediately preceding that date.

In a February 27, 2003 letter, the petitioner stated, "[The beneficiary's] required hours during which he must be on premises to teach classes are: 1:00 pm to 5:30 pm on Monday and Wednesday, 11:15 am to 5:30 pm on Tuesday, 8:30 am to 5:30 pm on Thursday, and 11:30 am to 5:30 pm on Friday." A class schedule for the beneficiary for 2002-2003 reflects these same hours.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. To hold otherwise would be contrary to the intent of Congress.

The evidence indicates that the beneficiary was required to work 29 hours per week. We note that the 2002-2003 work schedule only requires the beneficiary to arrive at the school no more than 15 minutes before his scheduled class and permits him to leave at the completion of his final class of the day. Although the new work schedule also indicates that the beneficiary would be required to teach outside of school hours to "help improve the ability to communicate with the student," the petitioner submitted no evidence that the beneficiary engaged in extracurricular teaching during the two year period preceding the filing date of the petition. Consistent with the requirements of the U.S. Department of Labor's Bureau of Labor Statistics and other regulations pertaining to employment based visa petitions, CIS holds that employment of less than 35 hours per week is not full time employment.

The evidence does not establish that the beneficiary worked in full time as an Islamic teacher for two full years immediate preceding the filing of the visa petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.